

REMARKS/ARGUMENTS

Claims 1 and 3-24 are pending in the Application. Claims 1 and 3-24 have been rejected. Claims 1, 4, 6-12, 14, 15, 18, 20, 21 and 23 are rejected under 35 USC § 103(1) as being unpatentable over Fashiro, et al (JP 2000-226029) in View of Matsumoto (JP 9-315461) and Hosoi, et al (JP 2002-53159). Claims 3, 5, and 16 are rejected over Tashiro, Matsumoto and Hosoi, et al, and further in view of U.S. Pat. No. 4,184,605 to Hanson ("Hanson"). Claims 1, 3-13 and 20-24 are further rejected in view of 35 USC § 112, second paragraph as being indefinite, and more specifically with regard to the dimension of the small opening.

Based on the Examiner's comments and the cited prior art, independent claims 1, 14 and 20 have been amended to more clearly define the invention and to distinguish the applicants invention over the prior art. More specifically, the Examiner has rejected the noted claims stating that "Matsumoto teaches it is known to provide a can end with a substantially circular opening for receiving a straw therein and capable of frictionally engaging the straw." Emphasis added.

With all due respect, Matsumoto teaches a beverage container end closure which is designed specifically to allow upwardly free travel of a drinking straw through the small opening of the end closure upon removal of a seal. Without free travel, i.e., non-frictional engagement, the straw would be retained within the beverage container, and the end closure/pop-up straw combination would be rendered inoperable.

Contrary to the invention disclosed in Matsumoto, the Applicant's invention as set forth in the amended claims is required to have sufficient frictional engagement between the outer surface of the straw and the internal edge of the small opening to 1) retain the straw in a distinct, non "floating" position and b) provide a substantially spill-proof container based on the tight tolerance between the straw and the small opening. Thus, it is respectfully submitted that Matsumoto teaches

Application No. 09/757,362

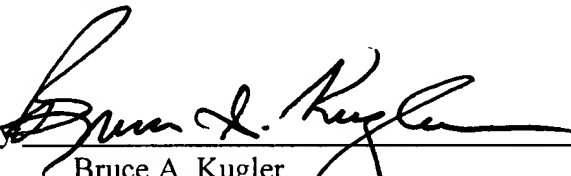
away from the Applicant's Amended Claims since Matsumoto requires travel within the small opening to be functional, while the Applicant's claimed invention is restricted from vertical movement and is frictionally engaged to the edge of the small opening.

With regard to the Examiner's rejections pursuant to 35 USC § 112, the Applicant has amended the specification to more clearly define that the small opening adapted to receive the straw has an opening area no greater than 0.1503 square inches. This is supported by original claim 20, which defined a small opening having a diameter no greater than 0.4375 inches, which equates to an area of 0.150 square inches. Thus original claim 14 was correct, with the exception that the term "square" was inadvertently omitted before the word "inches."

Based on the foregoing, Applicants believe all pending claims are in conditions for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned attorney at 303-863-9700.

Respectfully submitted,

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